

**BEFORE THE KANSAS COMMISSION ON PEACE OFFICERS'
STANDARDS AND TRAINING**

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In the Matter of)
)
Richard W. Bachman)
 Cert. # 18726)
 Respondent.)

Case No. 2014-0182

ORDER

Revoking Certification
as a Law Enforcement Officer

On February 9, 2016, the above-referenced matter comes on for hearing before the Kansas Commission on Peace Officers' Standards and Training (Commission). Pursuant to K.S.A. 2015 Supp. 77-514(g), the Commission has delegated its authority as Presiding Officer to the Hearing Panel, which is comprised of Commissioners Richard Powell, Chief Deputy of Sedgwick County Sheriff's Office; Herman Jones, Sheriff of Shawnee County Sheriff's Office; and Bradley Schoen, Director of Riley County Police Department. Richard W. Bachman appeared in person and by counsel, G. Craig Robinson. Present at the hearing were Eric N. Williams, Special Assistant Attorney General, who serves as Litigation Counsel for the Commission, and Janet L. Arndt, Assistant Attorney General, who serves as General Counsel to the Commission.

Based upon its records, the evidence, and arguments presented at the hearing, the Commission makes the following findings of fact and conclusions of law.

Findings of Fact

1. Richard W. Bachman (Bachman) began his law enforcement career as a reserve officer with the Wichita Police Department (WPD) in 1985. The WPD hired him as a full-time law enforcement officer in January 2000. Bachman received his certification as a law enforcement officer from the Commission in June 2000.

2. On August 25, 2014, the WPD notified the Commission that Bachman had submitted a voluntary resignation two weeks earlier under questionable circumstances. The WPD was conducting an internal and criminal investigation on a complaint alleging criminal conduct by Bachman. Based upon this information, the Commission began its investigation.

3. After conducting an investigation, the Commission's Investigative Committee issued a Summary Proceeding Order on August 20, 2015. The Investigative Committee found Bachman had committed two violations under the Kansas Law Enforcement Training Act (KLETC). Specifically, it concluded that Bachman had (1) failed to maintain good moral character that warrants the public trust and (2) engaged in unprofessional conduct by exploiting or misusing his position as an officer to establish or attempt to establish a financial, social, sexual, romantic, physical, intimate, or emotional relationship. Based upon these conclusions, Bachman's certification as a law enforcement officer was revoked.

4. Bachman filed a request for a hearing. Prior to the hearing, Bachman was granted a continuance and notified of the hearing scheduled for February 8, 2016.

5. On January 4, 2016, the Investigative Committee issued an Amended Summary Proceeding Order. It concluded that Bachman had committed the two violations referenced in paragraph 3 above and four additional violations. Specifically, Bachman had: (1) provided false information or otherwise failed to cooperate in a commission investigation to determine a person's continued suitability for law enforcement; (2) engaged in conduct which, if charged as a crime, would constitute a felony crime under Kansas law; (3) engaged in conduct which, if charged, would constitute a misdemeanor crime that the Commission has defined by rules and regulations as reflecting on the honesty, trustworthiness, integrity or competence of a law enforcement officer; and (4) engaged in unprofessional conduct by intentionally using a false or deceptive statement in any official document or official communication.

6. At the hearing, the Hearing Panel admitted without objection by either party State's Exhibits 1 through 23 and Respondent's Exhibits A through E. After neither party raised any preliminary issues, the Hearing Panel commenced the evidentiary hearing on the Amended Summary Proceeding Order.

7. On August 10, 2014, Bachman was on duty in a WPD uniform and a marked WPD car. His patrol area included an area in downtown Wichita known as Old Town.

8. On that date between 8 to 9 p.m., [REDACTED] went with two friends to a bar in Old Town to meet her coworkers. Because she wanted to leave earlier than her friends did, [REDACTED] planned to take a cab home. While she was outside on the bar's patio, [REDACTED] saw Bachman seated in his patrol car in front of the bar. She recognized Bachman from when she worked at a QuikTrip a few years earlier and he would come into the store while on duty.

9. [REDACTED] waved at Bachman and he motioned for her to come to his car. Bachman and [REDACTED] talked for a few minutes. [REDACTED] mentioned that she planned to take a cab home. Bachman offered to drive her home after he completed doing something else. [REDACTED] accepted. [REDACTED] went back to the bar and Bachman left.

10. Bachman returned to the bar at approximately 11:42 p.m. to do a club check, meaning the officer enters the bar to show his presence. Bachman saw [REDACTED] and again offered a ride home. [REDACTED] had already called for a cab but agreed to accept his offer because she did not want to take a cab and it seemed safe to ride with an officer. [REDACTED] was not intoxicated because she began to drink water prior to Bachman's arrival. [REDACTED] testified that she had no relationship with Bachman and there were no flirtatious discussions.

11. When they went outside, Bachman had parked his patrol car in the alley next to the bar. [REDACTED] testified Bachman told her that he was required to do a pat down search before she could get in the patrol car. She placed her hands on the patrol car and Bachman patted his hands down her both of her sides, including her breasts. The touching confused [REDACTED] but she was not sure if she had correctly interpreted it. As [REDACTED] started to get in the back seat, Bachman told her to get in the front seat. [REDACTED] did so.

12. According to [REDACTED] Bachman took his police hat from the dashboard and put it on her head. He then took a photograph of her with his phone. While en route to her home, Bachman talked about swimming and asked [REDACTED] if she had a swimsuit or went skinny-dipping. He also asked if she took photographs. At that time, [REDACTED] was upset, confused, and started to get scared. [REDACTED] pulled out her cell phone, turned on the recorder, and placed it between her legs because she felt something was going to happen.

13. Without asking or stopping the car, Bachman reached over with his right hand and placed it underneath [REDACTED] tank top and bra, touching her right breast. While touching her right breast, Bachman mentioned it felt "crunchy." [REDACTED] testified that she kept her driver's license and money in her bra. Bachman then moved his hand, touched her left breast a little longer. Bachman asked if her breasts were real because they felt like they were real. [REDACTED] did not comment.

14. [REDACTED] felt confused, scared, and trapped because she could not open the door and get out of the car. [REDACTED] was 27 years old, 5 feet 1 inch tall and weighs 105 pounds. Bachman was 59 years old, 6 feet 2 inches tall, and weighs 240 pounds. Bachman was also in uniform and driving the patrol car.

15. As they approached her house, Bachman told [REDACTED] not to tell her husband and to keep it a secret. She said okay and went into her house. The ride from the bar to her house took approximately 10 minutes. Because she felt violated, [REDACTED] told her husband what had happened. She then did a search on her smart phone and found a WPD photograph of Bachman. She took a screen shot of his photograph. [REDACTED] also called Lance Chaffin.

16. Lance Chaffin was a part of [REDACTED]'s group of coworkers at the bar. Chaffin saw Bachman park his patrol car outside the bar and [REDACTED] going over to talk to Bachman. Chaffin was about 10 feet from the patrol car and heard [REDACTED] say

that she wanted to stay a little longer and would get a cab to go home. Bachman offered a ride home to [REDACTED]. When [REDACTED] returned to the bar's patio, she said Bachman was going to give her a ride home. Prior to midnight, Chaffin saw Bachman inside the bar talking to different people. Bachman then talked to [REDACTED] and they left the bar together.

17. Chaffin testified [REDACTED] called him within an hour of leaving the bar with Bachman. She was hysterical, screaming, and crying. Chaffin talked to [REDACTED]'s husband who said he was trying to determine what happened to [REDACTED]. Chaffin talked again to [REDACTED] who told him Bachman stopped about one block from her home and then grabbed her right breast. He then slid his hand over and touched her left breast. [REDACTED] also told Chaffin that Bachman told [REDACTED] not to tell her husband when they arrived at her home.

18. While speaking with [REDACTED] Chaffin saw Bachman return to the bar. Afterwards Chaffin approached Bachman and asked if [REDACTED] got home safe. Bachman was standoffish and acted as if he did not know [REDACTED]. Chaffin thought Bachman's behavior was odd.

19. After talking with Chaffin, [REDACTED] called dispatch and asked to speak with Bachman's supervisor regarding a complaint. Sergeant Donald Kimball supervised Bachman and initially responded to [REDACTED]'s request by telephone at approximately 12:34 a.m. on August 11, 2014.

20. [REDACTED] immediately recognized the name and voice of Sergeant Kimball because they had been former neighbors when [REDACTED] was in middle school. [REDACTED] was crying and said "Oh, thank God it's you; I can talk to you." She told Sergeant Kimball about Bachman giving her a ride home from the bar and touching her breasts. Sergeant Kimball told [REDACTED] that he and another supervisor, Sergeant Diehl, were leaving to come to her house.

21. Sergeant Kimball next reviewed the computer-aided dispatch (CAD) recording of Bachman's activities that evening. It showed Bachman reported leaving his patrol car to do a bar check at Finn's at 11:54 p.m., and returned from the bar check nine minutes later. The CAD record did not show that Bachman went to [REDACTED] address, which was outside of Bachman's patrol area. The CAD record also showed a call made from [REDACTED] address to make a complaint against an officer. Sergeant Kimball told dispatch to delete the display of the call from [REDACTED]'s address. The officers in Bachman's area had access to the CAD record and he did not want them to see that display, especially Bachman.

22. Before Sergeants Kimball and Diehl arrived at [REDACTED]'s house, [REDACTED]'s husband called police dispatch and requested the sheriff's office respond to his wife's call about Bachman.

23. [REDACTED] and her husband met Sergeants Kimball and Diehl in the driveway of their residence. [REDACTED] agreed to go downtown for a formal recorded interview but her husband declined because he had to care for their children. However, [REDACTED]'s husband told Sergeant Diehl that [REDACTED] had sent him a text between 11:30 p.m. and midnight saying she was on her way home. When she arrived, [REDACTED] told her husband that the officer who gave her a ride had asked about her driver's license and then placed his hands underneath her shirt on her left and right breasts as they rode home.

24. While her husband talked with Sergeant Diehl, [REDACTED] told Sergeant Kimball that they recognized each other from when she worked at QuikTrip. [REDACTED] told Bachman that she had been drinking and planned to call a cab to get home. Suddenly, Bachman touched her chest, just above her breasts, and told her that there was a bug crawling on her. [REDACTED] was startled but did not think much about it because she did not want a bug on her. Bachman then offered [REDACTED] a ride home but she declined because she was not ready to go home at that time. Officer Bachman told her to let him know when she needed a ride home and left shortly thereafter.

25. [REDACTED] also told Sergeant Kimball that Bachman later returned to the bar and offered her a ride home. She told her friends that Bachman was going to take her home. When they got to his patrol car, Bachman said WPD policy required him to pat her down before she could ride in the patrol car. He patted her down the sides and told her to get in the front seat. While on the way home, Bachman reached over and placed his hand underneath her tank top and bra. [REDACTED] "was taken off guard, was scared, and did not know what to say to Officer Bachman." [REDACTED] also told Sergeant Kimball that Bachman touched her breasts a second time. Bachman did not say anything either time he touched her. [REDACTED] told Sergeant Kimball that Bachman told her to keep it a secret and not to tell her husband. [REDACTED] then began to cry and said she should have told Bachman "no" and not to touch her. [REDACTED] did not appear to be intoxicated to Sergeant Kimball. Sergeant Kimball took [REDACTED] to the Investigations Section where Detective Brian Safris interviewed her.

26. [REDACTED] told Detective Safris that she initially talked with Bachman outside the bar while he was in his patrol car. They talked about QuikTrip and [REDACTED]'s prior arrest for driving under the influence (DUI). During their discussion, Bachman touched [REDACTED], who was wearing a tank top, above her breasts and told her she had a bug on her. [REDACTED] thought this was unusual because she had not felt or seen a bug prior to Bachman touching her. [REDACTED] went back inside the bar; Bachman returned within an hour. She told him she would take the ride home. Bachman told her that he would have to pat her down and he did so. Inside the patrol car, Bachman took his hat from the dash and told her to put it on. [REDACTED] put on the hat and Bachman took a picture of her with his smart phone.

27. [REDACTED] also told Detective Safris that while driving home Bachman asked her if she did photo shoots in bathing suits or lingerie and told her that he was married. Without asking, Bachman reached over put his hand inside [REDACTED]'s tank

top and bra and touched her right breasts. Bachman told [REDACTED] "That's crunchy." [REDACTED] said her driver's license and money were in her bra. Bachman then removed his hand and reached underneath her tank top and bra and touched her left breast and pinched her nipple. He told [REDACTED] that he could tell she was natural. [REDACTED] did not respond but started a recording on her cell phone; it only last a few seconds because her memory was full. Bachman dropped [REDACTED] off at her residence and told her not to tell her husband. He then told her it was good to see her. [REDACTED] told Detective Safris that she felt confused, scared, and trapped during and after the time Bachman fondled her breasts. She also told him that she was scared of going to jail.

28. After taking [REDACTED] to the Investigations Section, Sergeant Kimball called Bachman and told him to come to the Investigations Section. Sergeant Kimball did not question Bachman but sat with him in a room while they waited for Bachman's interview with the detectives. Bachman questioned Sergeant Kimball about what was happening. Sergeant Kimball explained that allegations had been made but he could not discuss it. Bachman stated, "This is what I get for giving someone a ride home." Bachman was very nervous and talking about his pension.

29. Detective Jeffrey McVay reviewed [REDACTED]'s interview and the audio recording from her cell phone. The recording on [REDACTED]'s cell phone was very short as her phone ran out of memory. Detective McVay could not discern the conversation on the recording. When played at the hearing, the entirety of the recording was not audible but it did record Bachman using the word "swimming."

30. Detective McVay then met with Bachman to conduct a criminal interview. Bachman invoked his Miranda rights, but asked what sexual assault the accusation involved. When told the claim was a sexual battery, Bachman asked, "Even though it was consensual on her part?" Detective McVay did not respond. Bachman consented to a DNA sample and a search of his cell phone and personal gear bags. Bachman was alone in the interview room for approximately three hours. The video recorded Bachman making the following comments.

"I'm not the bad guy here."

"Yeah, oh well. Fuck."

"Yea, what am I gonna do."

"I'm such an idiot."

"Disgraced."

"I apologize for putting you through this."

"I am not a criminal."

"I left in disgrace."

"Thanks a lot Bitch."

"I'm such an idiot. Oh my God, I can't believe I did what I did."

"Yep, I'm going to jail."

"I'm cooked."

"I can't believe any of this is happening."

"Maybe this is it, finally."

"Oh, come on, God dang it. Arrest me or just let me go."

"Even though it was consensual on her part."

"I'm done. Oh, wow in a fleeting moment my career is over and I'm probably going to jail."

"I didn't commit a fucking felony."

31. Bachman next met with Detective Kevin Real for an administrative internal investigation. Bachman chose to submit his resignation rather than participate in a compelled administrative interview. Nevertheless, the WPD Professional Standards Bureau completed its investigation and found on November 12, 2014, that Bachman had engaged in conduct unbecoming to an officer and failed to cooperate with the administrative internal investigation. The Bureau also found that Bachman did not commit the felony crime of aggravated sexual battery.

32. Sergeant Kimball testified WPD policy does not prohibit an officer from giving a citizen a ride, but it is not normal practice. Because [REDACTED] said she would call a taxi, Sergeant Kimball stated Bachman should not have offered her a ride home.

33. Sergeant Kimball also testified WPD policy does not require an officer to pat down an individual who is not under arrest and will be riding in the front seat of a patrol car. Even if an individual is under arrest, the proper procedure is that a male officer must call for a female officer to pat down a female in custody. An officer can pat down an individual of the opposite sex if exigent circumstances exist. Because no exigent circumstance existed, Bachman did not follow WPD policy when he patted down [REDACTED]

34. Sergeant Kimball testified when transporting a citizen, WPD policy requires an officer to notify dispatch, and if the officer is the opposite sex than the citizen, the officer must record the beginning and ending mileage of the patrol vehicle. WPD policy also requires an officer to obtain approval from a supervisor prior to leaving his or her patrol area. Bachman did not comply with these policies when he transported [REDACTED] from the bar to her residence.

35. A WPD detective interviewed another person at the bar who knew [REDACTED] but did not have a close relationship with her because she believed [REDACTED], as a married woman, acted inappropriately with other males. She had seen [REDACTED] jump on other males and wrap her legs around them while giving them a hug. Another WPD detective interviewed an additional person at the bar with [REDACTED]'s group who said he received a text from [REDACTED] at about 1 a.m. asking to him over because her husband was upset. When he arrived at her house [REDACTED] had already left with Sergeants Kimball and Diehl.

36. John Gaunt, an investigator with CPOST, began his investigation after WPD informed him that no criminal charges were going to be filed against Bachman. During an interview, Bachman told Gaunt that he stopped his patrol car at the bar to talk with a man that he saw. While talking with him, [REDACTED] walked over to his car and

asked if he remembered her from when she worked at QuikTrip several years earlier. Bachman told her he did. Bachman claimed [REDACTED] asked him for a ride home. Bachman jokingly told her that he could but he would have to pat her down first; [REDACTED] laughed. [REDACTED] told Bachman she was married and had kids, and she had been arrested by the Kansas Highway Patrol (KHP) for DUI. [REDACTED] told Bachman the officer molested her during the DUI arrest. [REDACTED] told Bachman if he came back between 12:00 to 12:30 a.m., he could give her a ride home.

37. Bachman told Gaunt that he drove around and returned to the bar at about midnight. While he was talking to the manager, [REDACTED] approached him and asked about the ride home. They went to his patrol car; Bachman said [REDACTED] laughed when he patted her down. Bachman stated [REDACTED] put on his hat and took a picture of herself with her cell phone. He then took a picture of her with his cell phone and proceeded to take [REDACTED] home.

38. When Gaunt told Bachman about [REDACTED]'s accusations of touching her breasts, he responded, "She said I could do that." Bachman explained that they were kidding around; he told her she had nice boobs and she replied, "Well, thank you." He asked [REDACTED] if he could touch them. Bachman said he did so after [REDACTED] said, "Go ahead." Bachman reached in and felt her breasts for approximately five seconds. [REDACTED] did not say anything while he touched her breasts or afterwards. Bachman told Gaunt that [REDACTED] was nonchalant, carefree, and joking. [REDACTED] did not show any signs of stress. Bachman also told Bachman that it was not as if he indicated to her that I am a WPD officer and I am going to do these things. Upon arriving at her home, [REDACTED] gave Bachman a hug and kiss on the cheek. Bachman returned to the bar and talked to the manager. At that time, no one indicated that [REDACTED] had talked to anyone at the bar.

39. Bachman explained to Gaunt that he made the statement, "This is what I get for giving someone a ride," to Sergeant Kimball because he saw on the CAD that a caller from [REDACTED]'s address asked to speak to a supervisor. Bachman assumed the call was about him.

40. Bachman had not seen [REDACTED] at bars previously. Bachman advised Gaunt that he did not drink; his only vices were smoking cigars and being stupid and he was stupid on that night. Gaunt agreed that Bachman cooperated with him during the investigation.

41. Gaunt verified that [REDACTED] had an arrest record for DUI. KHP told Gaunt that [REDACTED] never filed a complaint regarding the DUI arrest and nothing in KHP's records indicated there was improper conduct during the DUI arrest. When Gaunt interviewed [REDACTED] she never mentioned any misconduct by the KHP officer during her DUI arrest. However, she did say that whenever she had contact with a police officer, it ended up badly.

42. Bachman testified that he reported to work on the evening of August 10, 2014, and began to patrol his area. At approximately 11 p.m., he was patrolling near the bar when he saw a couple of men and stopped to talk to one of them. At that time, [REDACTED] came over to his patrol car and asked if she remembered him. After she identified herself, Bachman remembered that he knew her when she worked at QuikTrip several years earlier. The men then left and [REDACTED] stayed to talk to him. Bachman did not smell any odor of alcoholic beverage on [REDACTED].

43. Bachman testified [REDACTED] told him that she had gotten married and had two children. She also no longer drove after drinking since her arrest for driving under the influence. [REDACTED] told Bachman that an officer molested her during the DUI arrest. Bachman told her that if this was true, she should report it to the KHP.

44. According to Bachman, [REDACTED] asked if he could take her home; he said he could. He jokingly said he would have to pat her down. [REDACTED] said okay and asked him to come back in one hour. Bachman returned to the bar approximately 45 to 60 minutes later.

45. Bachman testified he entered the bar and talked to the manager. [REDACTED] approached and asked him if he was ready to give her a ride home. Bachman said, "Okay, let's go."

46. When they arrived at his patrol car, Bachman reminded her that he would have to pat her down. [REDACTED] said okay and put her hands on the car; he patted her down and told her to get in the front seat. [REDACTED] got in the front seat.

47. Bachman testified that [REDACTED] asked if she could wear his police hat and he responded affirmatively. She put it on and took a picture of herself with her phone. He also took a picture of her but deleted it after he dropped [REDACTED] off at her home because he did not want his wife to find it.

48. Bachman estimated that the trip from the bar to [REDACTED]'s residence took about 5 to 10 minutes. [REDACTED] appeared to be relaxed and told him she had a drink or two but he did not smell alcohol on her and she did not appear to be intoxicated.

49. Bachman testified he and [REDACTED] conversed but he did not ask her anything about swimming, being a model, or taking pictures. He thought they were flirting with each other and [REDACTED] was into him. [REDACTED] acted carefree and happy. Bachman did not believe [REDACTED] was uncomfortable or afraid while they were in his car.

50. Bachman believed [REDACTED] was attractive and he told [REDACTED] that she had nice boobs and asked if he could feel them. [REDACTED] said yes. Bachman then touched her right and left breasts with his right hand and told her she had nice breasts. [REDACTED] said no when Bachman asked if he could see her breasts. He could not explain why he touched [REDACTED] other than he made a mistake. Because she was

married, Bachman told [REDACTED] to "keep it between us" and not tell anyone. When they got to her house [REDACTED] gave Bachman a quick hug and kiss and then left the car. Bachman returned to the bar.

51. Bachman admitted his conduct was a mistake and claimed he misread [REDACTED]'s signals. Bachman expressed remorse that he messed up and wanted to take back what happened. Bachman apologized to other law enforcement officers and to [REDACTED] for his conduct that evening. Bachman did not recall that WPD policy required approval to travel outside of assigned patrol area. Bachman realized that he was not required to pat down [REDACTED] but did it as a joke.

52. Bachman presented numerous documents for consideration. None of these documents indicates that the authors had any personal knowledge of the incident between Bachman and [REDACTED]. There were nine letters of reference from his family and co-workers in law enforcement. All of the letters spoke to Bachman's commitment to and passion for law enforcement. They also addressed his dedication to helping the citizens of Wichita, his strong work ethic, and his adherence to being fair and honest.

53. During the course of his career, Bachman received nine written reprimands for several offenses, such as failing to file a supplemental report, losing WPD property, missing a mandatory meeting, failing to use a seat belt, failing to report to court, and making an unprofessional comment to an officer.

54. By contrast, Bachman also received nine certificates or awards, such as unselfish endeavor in advancing or promoting the image of the WPD, performance of duty without thought of personal gain, exemplary service rendered to the community, service to community in the interest of better law enforcement, saving a human life, and outstanding performance while assisting on a medical call.

55. Bachman also provided his performance reviews by his supervisors. During his first year, his ratings in all areas were "meets expectations." In the subsequent years, his ratings quickly improved to "outstanding," "exceeds expectations," "exemplary," and "exceptional performance."

Conclusions of Law

Engaging in Conduct Constituting a Misdemeanor Offense

56. The Commission is authorized to suspend, condition, or revoke the certification of a law enforcement officer who engaged in conduct that, if charged as a crime, would constitute a misdemeanor crime that reflects on the honesty, trustworthiness, integrity or competence of a law enforcement officer as defined by the Commission in its rules and regulations. K.S.A. 2015 Supp. 74-5616(b)(5). One such misdemeanor crime is a "sexual battery, as defined in K.S.A. 2011 Supp. 21-5505 and amendments thereto." K.A.R. 106-2-2a(a)(12).

57. The definition of a misdemeanor sexual battery is "the touching of a victim who is not the spouse of the offender, who is 16 or more years of age and who does not consent thereto, with the intent to arouse or satisfy the sexual desires of the offender or another." K.S.A. 2015 Supp. 21-5505(a), (c)(1).

58. It is undisputed that Bachman was not [REDACTED]'s spouse, [REDACTED] was more than 16 years of age, and Bachman touched [REDACTED]'s breasts. Although there was no direct testimony about whether the intent of the touching was to arouse the sexual desires of Bachman, circumstantial evidence supports the conclusion that it was. [REDACTED] testified Bachman asked about photographs of her wearing swimming suits and if she went skinny-dipping; although Bachman denied such conversation, the word "swimming" can be discerned on the recording that [REDACTED] made. Additionally, Bachman testified that he believed they were flirting with each other and [REDACTED] was interested in him. Bachman also admitted that he asked [REDACTED] if he could see her breasts. This evidence leads to the conclusion that Bachman touched [REDACTED]'s breasts with the intent to arouse his sexual desires.

59. The remaining element for a sexual battery is whether [REDACTED] consented to Bachman touching her breasts. Bachman claimed he asked [REDACTED] if he could touch her breasts and [REDACTED] said yes. [REDACTED] however, denied that Bachman asked if he could touch her breasts and she consented to him touching her breasts. The question of whether consent was given requires consideration of all facts surrounding the incident. *State v. Chaney*, 269 Kan. 10, 19 (2000). When considered in totality, the weight of evidence supports [REDACTED]'s testimony that she did not consent, verbally or otherwise, to the touching of her breasts.

60. Even though there was miniscule evidence that [REDACTED] may have flirted with other men, thus supporting Bachman's claim, this does not mean if she did flirt with Bachman, her flirting constituted consent to the touching of her breasts or indicated such act was acceptable. Bachman also contends that [REDACTED]'s statement to Sergeant Kimball that she should have told Bachman "no" and not to touch her breasts is indicia of a conversation about his asking for consent to touch her breasts. However, [REDACTED] made this statement after telling Sergeant Kimball that Bachman told her to keep it a secret and not to tell her husband. Thus, it is probable this statement concerned Bachman's request to keep his touching of her breasts a secret and not to tell her husband.

61. Additionally, [REDACTED] made a recording immediately after Bachman touched her breasts; she told her husband what had happened when she arrived home; she took a screenshot of Bachman on her phone to identify him; she was crying and upset when she talked with Lance Chafin; she then called dispatch asking to speak with Bachman's supervisor; and she was crying when she spoke with Sergeant Kimball. In short, [REDACTED]'s behavior after the touching supports a finding that it was a nonconsensual touching. Based upon the evidence, the Commission finds that [REDACTED]'s testimony is more credible and she did not consent to Bachman touching her breasts.

62. Based upon the totality of the evidence, the Commission concludes that Bachman engaged in conduct that, if charged as a crime, would constitute the misdemeanor crime of sexual battery that reflects on the honesty, trustworthiness, integrity or competence of a law enforcement officer, thereby violating K.S.A. 2015 Supp. 74-5616(b)(5) and K.A.R. 106-2-2a(a)(12).

Engaging in Conduct Constituting a Felony Offense

63. The Commission has the authority to suspend, condition, or revoke the certification of a law enforcement officer who "engaged in conduct which, if charged as a crime, would constitute a felony crime under the laws of this state." K.S.A. 2015 Supp. 74-5616(b)(5).

64. The crime of aggravated sexual battery is classified as a person felony. K.S.A. 2015 Supp. 21-5505(c)(2). Aggravated sexual battery under K.S.A. 2015 Supp. 21-5505(b)(1) is defined as "the touching of a victim who is 16 or more years of age and who does not consent thereto with the intent to arouse or satisfy the sexual desires of the offender . . . when the victim is overcome by force or fear."

65. The Commission hereby incorporates by reference paragraphs 58, 59, 60, and 61 above finding that Bachman engaged in conduct that, if charged as a crime, would constitute the misdemeanor crime of sexual battery. This shows that the touching was not accomplished by mutual consent and was done to satisfy Bachman's sexual desires. However, the aggravated sexual battery statute also requires that the touching was against [REDACTED]'s will by force or fear.

66. There is nothing in the evidence to show Bachman used actual physical force or made threats against [REDACTED] during the entirety of this incident. Nevertheless, the argument is, in essence, that Bachman used a show of authority such that [REDACTED] was overcome with fear when he touched her. In determining what is meant by the phrase overcome by fear in K.S.A. 2015 Supp. 21-5505(c)(2), we look to Kansas appellate cases addressing that phrase as used in the prior rape statute, K.S.A. 21-3502(a), which is now codified in K.S.A. 2015 Supp. 21-5503(1)(A).

67. "[The rape statute] requires only a finding that she did not give her consent and that the *victim was overcome by force or fear to facilitate the sexual intercourse.*" *State v. Borthwick*, 255 Kan. 899, 914 (1994). (Emphasis added.) To satisfy the requirement that the victim was overcome by force or fear, a victim need not endure a beating or be threatened with a deadly weapon. 255 Kan. at 911. "Fear in and of itself is inherently subjective. . . . What renders one person immobilized by fear may not frighten another at all." 255 Kan. at 913. "Under Kansas law, when a victim testifies that she has been overcome by fear, and her testimony is not so incredible as to defy belief, there is sufficient evidence to present the ultimate determination to the fact finder. The reasonableness of a particular victim's fear may affect the jury's assessment of the victim's credibility in arriving at its verdict." 255 Kan. 15 913-14. Thus, the degree of

fear required to prove that the victim was overcome by fear cannot be defined in absolute terms. *State v. Brooks*, 298 Kan. 672, 686 (2014).

68. The determination of whether a victim was overcome by force or fear is based upon the totality of the circumstances. 255 Kan. at 911. Circumstantial evidence can be relied upon to show that a victim was overcome by fear. See *State v. Cantrell*, 234 Kan. 42, 428-29 (1983) (while defendant made no threats, had no weapon, and did not curse or raise his voice, a jury could conclude victim's resistance was overcome by fear based on evidence showing that she resisted and struggled with defendant, cried, and begged for defendant to stop). It is not necessary that a victim be overcome by fear prior to or at the initiation of the unlawful touching. See *Brooks*, 298 at 690 (it is enough that the nonconsensual act and the victim's fear were eventually contemporaneous).

69. ██████ claimed she felt confused, scared, and trapped during and after the time Bachman fondled her breasts. She also stated that she was scared of going to jail. Suffice it to say, there are great differences in the physical size of Bachman and ██████. The evidence also shows Bachman wore his uniform, had his service weapon, and was in a marked patrol car, and the car was moving as he touched her. These factors could be indicia of a show of authority but must be considered with the totality of the evidence rather than in isolation.

70. ██████ also testified that she accepted Bachman's offer for a ride home because she felt it was safe to ride with an officer. Most likely, she also felt safe because she knew Bachman several years earlier when she worked at QuikTrip and she shared personal information with him during their first encounter at the bar. ██████ never testified that Bachman raised his voice at her, used profanity, displayed agitated behavior, or touched or mentioned his service weapon or his authority to arrest. Similarly, ██████ also never testified that Bachman's inappropriate conversation prior to the touching of her breasts caused her to fear him or that she told Bachman to stop at any time when he was touching her breasts. In fact, when he touched her right breast and felt something crunchy, ██████ said she kept her driver's license and money in her bra.

71. Bachman testified ██████ was carefree and happy that evening. He believed she was flirting with him. Bachman did not believe ██████ was uncomfortable or afraid. Bachman claimed he misread ██████'s signals. He also told Investigator Gaunt that ██████ did not show signs of stress and denied using his authority as a WPD officer to touch ██████.

72. After careful review and weighing of the evidence, the Commission finds at some point during the touching, ██████ was scared, but her testimony does not show that she was overcome by a fear that facilitated the touching of her breasts. Based upon the totality of the evidence, the Commission concludes that the evidence is insufficient to prove Bachman engaged in conduct that, if charged as a crime, would constitute the felony crime of aggravated sexual battery, thereby violating K.S.A. 2015 Supp. 74-5616(b)(5).

Failing to Maintain Good Moral Character

73. The Commission is authorized to suspend, condition, or revoke the certification of a law enforcement officer who failed to maintain the requirements for initial certification, including "good moral character sufficient to warrant the public trust" as a law enforcement officer. K.S.A. 2015 Supp. 74-5605(b)(5) and K.S.A. 2015 Supp. 74-5616(b)(1).

74. K.A.R. 16-2-4 defines the term "good moral character" for purposes of K.S.A. 2015 Supp. 74-5605 to include the following personal traits or qualities:

- "(1) Integrity;
- (2) honesty;
- (3) upholding the laws of the state and nation;
- (4) conduct that warrants the public trust; and
- (5) upholding the oath required for certification as specified in K.A.R. 106-3-6."

The required oath for certification as a law enforcement officer is:

"On my honor, I will never betray my badge, my integrity, my character, or the public trust. I will always have the courage to hold myself and others accountable for our actions. I will always uphold the constitution of the United States and of the state of Kansas, my community, and the agency I serve." K.A.R. 106-3-6.

75. The practice of law enforcement is reliant upon the trait of good moral character. The trust that the public places in law enforcement officers is based upon the expectation that an officer is honest, candid, fair, and respectful of the laws and individuals. Any officer failing to adhere to these standards has compromised their integrity.

76. The Commission hereby incorporates by reference paragraphs 58, 59, 60, and 61 above finding that Bachman engaged in conduct that, if charged as a crime, would constitute the misdemeanor crime of sexual battery. In other words, Bachman did not have consent when he touched [REDACTED]'s breasts and touched her breasts to satisfy his sexual desires. As a result, Bachman did not uphold the laws of this state.

77. Bachman's conduct also shows that he no longer possesses the necessary integrity to hold a certification as a law enforcement officer and that he violated the public trust as a certified law enforcement officer. Bachman conducted a pat down search of the opposite sex in violation of WPD policy and the search was clearly not warranted under the circumstances. Bachman claimed he did so in jest, but even if true, he did so while in uniform and on duty, which clearly shows lack of integrity for the law enforcement profession and bad judgment. In the car, he attempted to

engage [REDACTED] in conversation of a sexual nature. Then, even if we assumed there was mutual or implied consent, Bachman touched [REDACTED]'s breasts while he was on duty, in uniform, and in a marked patrol car. Again, this shows lack of integrity for the law enforcement profession and bad judgment. The public expects law enforcement officers to conduct themselves in a professional manner, which is characterized by being courteous, conscientious, and businesslike. Bachman clearly showed none of those attributes during this incident.

78. More important, [REDACTED] was only acquainted with Bachman as a law enforcement officer. She accepted his offer for a ride home because she thought it would be safe. In other words, she placed her trust in him because he was a police officer and Bachman breached that trust by sexually touching her. Additionally, the utterances Bachman made while he was alone in the interview room show his awareness that his touching of [REDACTED]'s breasts was wrongful and should not have occurred.

79. Based upon the totality of the evidence, the Commission concludes that Bachman has failed to maintain the requirements for initial certification, specifically "good moral character sufficient to warrant the public trust" as a law enforcement officer. K.S.A. 2015 Supp. 74-5605(b)(5), K.S.A. 2015 Supp. 74-5616(b)(1), and K.A.R. 16-2-4.

Committing Unprofessional Conduct - Exploiting or Misusing the Position as an Officer to Establish a Sexual, Romantic, Physical, Intimate, or Emotional Relationship

80 The Commission has the authority to suspend, condition, revoke the certification of a law enforcement officer who committed unprofessional conduct as defined by the Commission in its rules and regulations. K.S.A. 2015 Supp. 74-5616(b)(7). The definition of unprofessional conduct includes "exploiting or misusing the position as an officer to establish or attempt to establish a financial, social, sexual, romantic, physical, intimate, or emotional relationship." K.A.R. 106-2-3(h).

81. When she worked at QuikTrip and on the evening at the bar, [REDACTED] was only acquainted with Bachman as a law enforcement officer. During the first encounter with [REDACTED] at the bar, Bachman was on duty, in uniform, and in a marked patrol car. At that time, Bachman touched [REDACTED] above her breasts explaining that she had a bug on her. When Bachman returned to the bar, he was still on duty, in uniform, and in a marked patrol car. She accepted his offer to take her home because she thought it would be safe to do so. At that time, Bachman wrongfully told [REDACTED] that he had to conduct a pat down search before she could enter his marked patrol car. As he drove her home in the patrol car, Bachman had inappropriate conversation with [REDACTED]. In none of these instances did [REDACTED] question him or protest his conduct. Bachman's ruses were an attempt to assess whether [REDACTED] would protest or was willing to have a romantic or physical relationship with him. Bachman claimed they were flirting and he believed she was interested in him. This statement, along with his

conduct, proves Bachman exploited or misused his position as a police officer to establish a sexual or physical relationship with [REDACTED].

82. Based upon the totality of the evidence, the Commission concludes that Bachman committed unprofessional conduct by "exploiting or misusing the position as an officer to establish or attempt to establish a financial, social, sexual, romantic, physical, intimate, or emotional relationship." K.S.A. 2015 Supp. 74-5616(b)(7) and K.A.R. 106-2-3(h).

Committing Unprofessional Conduct - Intentionally Using a False or Deceptive Statement in Any Official Document or Official Communication

83. The Commission has the authority to suspend, condition, revoke the certification of a law enforcement officer who committed unprofessional conduct as defined by the Commission in its rules and regulations. K.S.A. 2015 Supp. 74-5616(b)(7). The definition of unprofessional conduct includes "[i]ntentionally using a false or deceptive statement in any official document or official communication" without a legitimate law enforcement purpose." K.A.R. 106-2-3(j)(1).

84. Based upon the Summary Proceeding Order, this count is based upon Bachman's response when WPD Detective McVey met with Bachman to conduct a criminal interview. Bachman asked what the accusation involved. When told the claim was a sexual battery, Bachman asked, "Even though it was consensual on her part?" Detective McVey did not respond and Bachman made no other statement. Thus, the evidence for this count is only that one question by Bachman.

85. As discussed above, the issue of consent was disputed. [REDACTED] claimed she did not consent and Bachman countered that she did. No independent witness existed to corroborate whether Bachman received verbal consent from [REDACTED] or whether [REDACTED]'s conduct indicated implied consent. Nor is there a recording of the entire incident in the car. Whether [REDACTED] gave consent, verbally or otherwise, cannot be corroborated.

86. The question of consent is largely dependent upon a determination of whether the alleged victim or the defendant is a more credible witness. This determination is solely within the province of the factfinder. *State v. Jackson*, 280 Kan. 16, 39-40 (2005), *cert. denied* 546 U.S. 1184 (2006). Thus, the final determination of whether Shaylynn or Bachman was more credible on the issue of consent occurs during the adjudicatory stage by the factfinder.

87. The WPD detective was not the jury or a judge who acted as a factfinder. Rather, the WPD detective gathers and investigates facts so that the jury or judge can resolve disputed facts. Additionally, Bachman made a question, rather than a statement, ostensibly to obtain information about [REDACTED]'s claim.

88. Based upon the totality of the evidence, the Commission concludes that the evidence was insufficient to show that when he asked Detective McVey about consent, Bachman committed unprofessional conduct by intentionally using a false or deceptive statement in any official document or official communication without a legitimate law enforcement purpose. Thus, a violation of K.S.A. 2015 Supp. 74-5616(b)(7) and K.A.R. 106-2-3(j)(1) has not been proven.

Providing False Information or Failing to Cooperate in an Investigation by the Commission

89. The Commission is authorized to suspend, condition, or revoke the certification of a law enforcement officer who "provides false information or otherwise fails to cooperate in a Commission investigation to determine a person's continued suitability for law enforcement certification." K.S.A. 2015 Supp. 74-5616(b)(3).

90. Based upon the Summary Proceeding Order, this count is based upon Bachman's statement to the Commission's Investigator, John Gaunt, that he had fondled [REDACTED]'s breasts but only after she gave him consent to do so.

91. The Commission incorporates by reference paragraphs numbered 85 and 86 above. Those paragraphs show that the final determination of whether [REDACTED] or Bachman was more credible on the issue of consent occurs during the adjudicatory stage by the factfinder.

92. The Commission's investigator was not the jury or a judge who acted as a factfinder. Rather, the Commission's investigator gathers and investigates facts so that the Commission can resolve disputed facts.

93. Based upon the totality of the evidence, the Commission concludes that the evidence was insufficient to show that Bachman provided false information in the Commission's investigation to determine his continued suitability for law enforcement certification when he told Investigator Gaunt he had consent to touch [REDACTED]. Thus, a K.S.A. 2015 Supp. 74-5616(b)(3) has not been proven.

Sanction

94. The Commission has concluded above that Bachman violated the following provisions of the Kansas Law Enforcement Training Act by:

engaging in conduct that, if charged as a crime, would constitute the misdemeanor crime of sexual battery that reflects on the honesty, trustworthiness, integrity or competence of a law enforcement officer pursuant to K.S.A. 2015 Supp. 74-5616(b)(5) and K.A.R. 106-2-2a(a)(12);

failing to maintain the requirements for initial certification, including good moral character sufficient to warrant the public trust as a law enforcement

officer pursuant to K.S.A. 2015 Supp. 74-5605(b)(5) and K.S.A. 2015 Supp. 74-5616(b)(1); and

committing unprofessional conduct by exploiting or misusing his position as an officer to establish or attempt to establish a sexual, romantic, physical, intimate, or emotional relationship pursuant to K.S.A. 2015 Supp. 74-5616(b)(7) and K.A.R. 106-2-3(h).

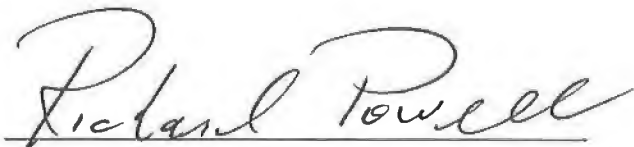
95. Bachman provided evidence of the accommodation, awards, and performance reviews he received during his career as well as letters of recommendation indicting the respect he earned from his co-workers. He also apologized to other law enforcement officers and to [REDACTED] for his conduct. While this is commendable, it fails to provide any justification or support for his violation of the above provisions. As stated in K.A.R. 106-2-4(b), "[a]ny single incident or event may suffice to show that an applicant or licensee lacks or has failed to maintain good moral character." Bachman's behavior on August 10 and 11, 2014, was one such incident. His behavior also resulted in additional violations – thereby showing the egregiousness of his conduct as a law enforcement officer.

96. Based upon the above three violations, separately and collectively, the Commission further determines that Bachman's certification as a law enforcement officer should be revoked.

Order

WHEREFORE, after consideration of the above findings of facts and conclusions of law, it is the decision and order of the Commission that the certification as a law enforcement officer issued to Richard W. Bachman be revoked. It is the further decision and order of the Commission that Richard W. Bachman must surrender and return to the Commission all evidence of his certification as a law enforcement officer within thirty (30) days from the date entered on the certificate of service below.

IT IS SO ORDERED.

A handwritten signature in cursive script that reads "Richard Powell". The signature is written in dark ink and is positioned above a horizontal line.

Richard Powell
Commissioner and Chair of Hearing Panel
As designated by and on behalf of the
Kansas Commission on Peace Officers'
Standards and Training

NOTICE OF ADMINISTRATIVE RELIEF

The above Order revoking the certification as a law enforcement officer of Richard W. Bachman is a final order. Pursuant to K.S.A. 2015 Supp. 77-529, a party may file with the Commission a petition for reconsideration within 15 days from the date noted below in the Certificate of Service. Such petition must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking judicial review.

Pursuant to K.S.A. 2015 Supp. 77-528, a party may file, if applicable, a petition for stay of effectiveness of the order prior to the expiration of the time in which to file a petition for judicial review. The filing of a petition for a stay of effectiveness is not a prerequisite for seeking judicial review.

NOTICE OF JUDICIAL RELIEF

If a petition for reconsideration is not filed, a party may file within 30 days from the date noted below in the Certificate of Service a petition for judicial review with the appropriate district court as provided in the Kansas Judicial Review Act, K.S.A. 77-601 *et seq.*

The person who may receive service of a petition for reconsideration, a petition for stay of effectiveness, or a petition for judicial review on behalf of the Commission is: Gary E. Steed, Executive Director of KS·CPOST, 1999 N. Amidon, Suite 350, Wichita, KS 67203.

CERTIFICATE OF SERVICE

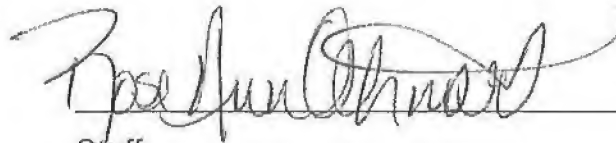
This is to certify that on this 17th day of April 2016, copies of the above Order and Notices of Administrative and Judicial Relief were deposited in the United States mail, first-class postage prepaid, and addressed to:

G. Craig Robinson
Attorney at Law
330 North Main
P. O. Box 2474
Wichita, KS 67201-2474

Richard W. Bachman



Mr. Eric Williams
KS-CPOST Litigation Counsel
1999 N. Amidon, Suite 350
Wichita, KS 67203

 4-7-2016

Staff
Kansas Commission on Peace Officers'
Standards and Training